IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

HOOSA VERSUS. STATE OF RAJASTHAN

S.B. Criminal Appeal No.125/1988 under Section 374(2) Cr.P.C. against the Judgment dated 22.2.88 in Sessions Case No.24/85 passed by Sh. Mangal Chand Tailor, RHJS, Additional Sessions Judge Bali.

DATE OF JUDGMENT : March 02 , 2007.

P R E S E N T

HON'BLE MR.JUSTICE CHATRA RAM JAT

Mr. Doongar Singh,for the appellant.
Mr.L.R.Upadhayay, P.P.

BY THE COURT:

1. This appeal is directed against the judgment and order dated 22.2.88 passed by the Additional Sessions Judge Bali, whereby he acquitted the accused appellant for the offence under sections 307 and 326 IPC but convicted and sentenced the accused appellant Hossa for offence under Sections 325 & 452 IPC, and sentenced to 4 years rigorous imprisonment and fine of Rs.5000/- under section 325 IPC and six months rigorous imprisonment with fine of Rs.500/- and further ordered to run both the sentences

concurrently.From amount of fine recovered from accused appellant, a sum of Rs 4000/- will be paid to injured Sankli.

2. The prosecution story is woven like this:-

On 29.3.85 a complaint lodged that there was disputes between Huda and Hoosa. On 29.3.85 when Huda and his wife Sankli was in house, then Hooda armed with an axe along with other two friends who have lathies in their hands entered the house of Sankali and inflicted axe blow on the head of Huda which resulted in to head injuries and his friend Bhana gave lathi blow on the eye of Sankali and her eye received injury. On hearing hue and cry of Huda and Sankali neighbour Sangari, Anda and Bhuta came there and on seeing them, accused Hoosa along with his friends ran away from the place of occurrence.Thereafter Huda lodged a report at Police Station Nana. Police registered offence under Section 452,323 IPC and injured were examined by Dr. T.R.Gehlot. The doctor found injury of sharp edged weapon on head of Sankali and advised for X-ray examination and kept the opinion reserve.She was sent to B angur Hospital Pali where Dr.G.N. Purohit Radiologist took X-Ray plate Ex.P.-3. On the body of Huda, Dr. Gehlot found injuries of blunt weapon. After reeving report of X-ray, investigation for offence under Section 307 IPC was conducted. Police recovered the weapon of offence and collected other material evidence. After investigation, police filed challan against the accused appellant

before the Additional Chief Judicial Magistrate, Bali, who committed the case to the Sessions Court for trial as the case is exclusively triable by the Sessions Judge. Other usual memos were prepared and challan against accused appellant was filed under section 452,307,326 IPC. Charge was read over and accused pleaded not guilty and claimed for trial.

Prosecution has produced 16 witnesses viz. P.W. 1 Mota Ram P.W.2 Umaid Ram, PW3 Dr.G.N.Purohit, P.W.4 Gordhan Singh PW5 Ishak Mohammed, PW6 Sultan Ahmed, PW7 Huda, PW8 Sankali,PW9 Singari PW10 Anda, PW11 Mala Ram, PW12 Pitha PW13 Bhuta PW14 Kala PW15 Dr.T.R.Gehlot and P.W.16 Banney Singhi and Ex P1 to Ex P19 documents were produced. Thereafter and statement of these witnesses recorded. Prosecution also exhibited 19 documents. Thereafter statement under Section 313 Cr.P.C. was recorded in which accused appellant said that he has been falsely implicated in this case.

3. Heard the learned counsel for the appellant and the learned Public Prosecutor and perused the record of the case .

4. Per contra, learned Public Prosecutor supported the impugned finding and urged that the appellant was rightly convicted and sentenced. So the appeal must be dismissed.Alternatively

submitted that if the leniency is given in the matter of sentence then fine should be increased.

5. Learned counsel Shri Doongar Singh for the appellant fairly conceded that so far as conviction under Section 325 and 452 IPC is concerned, he has nothing to say but looking to the fact that incident relates to year 22 years ago i.e. 29.3.85 and as per statement under Section 313 Cr.P.C. dated January 1988 appellant was 25 years of age and injured complainant and the appellant accused, they are of the same village and belongs to Grasia tribe which is very backward and agriculturist community so looking to these facts, punishment awarded under Section 325 IPC for 4 years RI is very hard and leniency should be given. Learned counsel further stated that the appellant remained in custody from 30.7.85 to 4.10.85 and 8.7.88 to 7.1.88 , approximately 8 moths and 11 days so he may be released on the imprisonment already under gone.

6. After hearing the arguments of the learned counsel for the accused appellant and Public Prosecutor, it is just and proper to give some leniency and looking to the facts and circumstances of the case, the appeal should be partly allowed and sentence awarded by the trial court is modified accordingly.

7. In the result, the appeal is partly allowed and the conviction awarded by the learned Additional Sessions Judge, Bali in Sessions Case No24/85 is maintained but the sentence is modified to the extent that period of imprisonment already undergone by the accused appellant and sentence of fine is maintained i.e. accused appellant to deposit Rs.5000/- in trial court and from the amount of fine Rs.4000/- be paid to Mst.Sankali injured. Accused appellant is on bail therefore,he is need not to surrender to custody.

[CHATRA RAM JAT],J.

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